



# **County of Fairfax**

## **Department of Tax Administration (DTA)**

### **Personal Property & Business License Division**

#### **Local Business Tax Appeals**

The Virginia General Assembly has instituted provisions that provide taxpayers with an option for problem resolution, without incurring the costly time and expense that can be associated with legal proceedings. Any person or business assessed a business, professional and occupational license (BPOL), machinery and tools or business tangible property tax may seek a review of his or her assessment. In order to be entitled to the provisions, however, an appeal must first be submitted in accordance with the process outlined below.

#### **General Information**

1. In order for an appeal to be filed, an "assessment" must first occur. An assessment is a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to written notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. An assessment includes a return filed on behalf of the taxpayer by the local assessing officer. Va. Code §58.1-3700.1.
2. Depending upon the basis of the request, taxpayers are eligible to submit either an appeal or an administrative appeal.
  - An appeal of a business tax assessment may be submitted to request an amendment, reclassification, or correction of the assessment. Va. Code §§58.1-3980 - 58.1-3989.
  - If the assessment is the result of an "appealable event", an administrative appeal may be filed to request an amendment, reclassification, or correction of the assessment. Va. Code §58.1-3703.1(A)(5)

An appealable event is an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license. VA Code §58.1-3703.1(A)(5)(a)

3. The timeframe allowed for submission of an appeal is dependent on whether the request is an appeal or an administrative appeal:
  - An appeal application for review to the Director of the Personal Property Division, Fairfax County Department of Tax Administration (DTA) may be filed within three (3) years from the last day of the tax year for any paid assessment or within one (1) year from the date of assessment, whichever is later. Va. Code §58.1-3980
  - An administrative appeal application for review to the Director of the Department of Tax Administration (DTA) may be filed within one (1) year of the date of an appealable event or within one (1) year from the last day of the tax year, whichever is later. Va. Code §58.13703.1(A)(5)

- Following an administrative appeal, a Final Local Determination appeal may be filed in writing with the State Tax Commissioner within 90 days from the date of the Final Local Determination to **Appeals and Rulings, Virginia Department of Taxation, P.O. Box 27203, Richmond, VA 23261-7203**. Collection activity may begin or resume at any time after the date of the Final Local Determination and will not be suspended until a written Notice of Intent to Appeal or an Appeal to the Tax Commissioner is timely filed and the DTA receives a copy. Interest will continue to accrue. The Appeal to the Tax Commissioner should contain a copy of the complete Administrative Appeal as submitted to DTA, a copy of the Final Local Determination and a statement explaining why DTA is in error. The statement should include analysis of the facts, issues and authority which the taxpayer believes DTA failed to consider. The Tax Commissioner will issue a Final Written Determination within 90 days, unless the Tax Commissioner notifies you that a longer period will be required. If new issues are present, within 30 days of the appeal notice provided to the State Tax Commissioner, the appeal to the State Tax Commissioner may be recalled and an administrative appeal filed requesting to address new issues, restarting the process.

The Virginia Department of Taxation, within the Guidelines for Appealing Local Business Taxes, specifies that, *"For any limitation of time in making an Appeal to the Tax Commissioner, Application for Review, reply or any other information or material...should the last day of such limitation period fall on a Saturday, Sunday, or holiday observed by the Commonwealth of Virginia, the Appeal, Application, reply, or other information or material may be filed on the next business day. For any limitation of time, the limitation shall begin to run on the day next following the event that triggers the time limitation."*

4. An appeal must be submitted in good faith. A submission in good faith is not "frivolous" or "jeopardized by delay". Va. Code §58.1-3983.1

"Frivolous" means a finding, based upon specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardized by delay" means a finding, based upon specific facts, that a taxpayer designs to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

5. Incomplete applications will not be accepted. The Director of the Department of Tax Administration, or his/her deputies or representatives, shall reject all incomplete applications. The taxpayer shall be notified and given 30 days to complete the application.
6. Upon receipt of the full and complete application, a full review will be conducted and a final written determination will be issued within 90 days after all the information needed has been submitted.
7. The Director of the Department of Tax Administration, or his/her Deputies or representatives, may request to hold a conference with the taxpayer or request the submission of additional information or documentation. A request for documentation customarily affords the taxpayer 30 days to submit the information. Additionally, the Director of the Department of Tax Administration, or his/her Deputies or representatives, may conduct a further audit or gather any other evidence deemed necessary for a proper and equitable determination of the appeal application.

The utilization of the appeal process does not preclude remedies available to the taxpayer through the Circuit Court.